



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1994

Ms. Elaine L. Fannin
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR94-851

Dear Ms. Fannin:

The Texas Department of Agriculture (the "department") has asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The department's request was assigned ID# 30189.

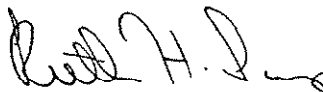
The department received a request for the findings relating to the investigation of a pesticide complaint. The department contends that the requested information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated in a judicial or quasi-judicial proceeding and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You provided this office information that shows litigation is reasonably anticipated. The department also supplied to this office for review the requested information. The requested information is related to the anticipated litigation. The department has therefore met its burden of showing that the requested information relates to pending litigation for purposes of section 552.103(a).

However, absent special circumstances, once all parties to the anticipated litigation have had access to the information at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). The information at issue that has not previously been disclosed to all of the parties to the anticipated litigation may be withheld from disclosure under section 552.103(a).

The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor.¹ Gov' Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.: ID# 30189

Enclosures: Submitted documents

cc: Mr. Juan Cavazos, Jr.
Rt. 2, Box 797
Raymondville, Texas 78580
(w/o enclosures)

¹We have marked two documents that have already been provided to the requestor.